

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

**TORRES CONSULTING AND LAW
GROUP, LLC,**
2239 W. Baseline Road,
Tempe, AZ 85283

Plaintiff,

v.

DEPARTMENT OF ENERGY,
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Defendant.

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. Torres Consulting and Law Group, LLC (“TCLG”), by and through undersigned counsel, files this action for declaratory and injunctive relieve and seeks the disclosure of public agency records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, that the Department of Energy (“the Department”) improperly withheld.

2. TCLG seeks an order declaring that the Department failed to comply with FOIA by withholding the subject documents from disclosure, and injunctive relief ordering the Department to disclose the requested documents immediately. TCLG alleges the following:

PARTIES

3. Plaintiff, TCLG, is a limited liability company, incorporated in the State of Arizona, with its principle place of business in Tempe, Arizona. TCLG is a consulting firm that oversees compliance on construction projects throughout the United States.

4. Defendant, the Department is a federal government agency of the United States.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action and personal jurisdiction over the Department pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has federal question

jurisdiction over this action pursuant to 28 U.S.C. § 1331.

6. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(c) and 5 U.S.C. § 552(a)(4)(B). TCLG's principal place of business is in Tempe, which is in the District of Arizona.

STANDARD OF REVIEW

7. Pursuant to 5 U.S.C. § 552(a)(4)(B), this Court reviews the Department's denial of TCLG's FOIA request de novo.

STATUTORY BACKGROUND

8. FOIA provides that federal agencies are required to disclose requested information to the general public unless the requested information falls under one of the nine narrowly construed disclosure exemptions.

9. A determination by the agency to comply with a FOIA request requires that the agency make records promptly available to the requester and to notify the requester of the agency's determination and the "reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination." 5 U.S.C. § 552(a)(6)(C)(i).

10. Exemption 4 of the FOIA protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § (b)(4).

11. Following the agency's final order, the aggrieved party may seek judicial review in the district where the requester resides, pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B).

12. The Court can award "reasonable attorney fees and other litigation costs reasonably incurred in any case" when the complainant substantially prevails. 5 U.S.C. § 552(a)(4)(E)(i).

FACTUAL BACKGROUND

13. On February 20, 2012, TCLG submitted an electronic FOIA request to the Department's Golden Field Office, EERE: Project Management Center.

14. On July 31, 2012, TCLG submitted a narrowed FOIA request to the Department's FOIA Officer, Ms. Michele Harrington Altieri.

15. TCLG requested copies of documents related to the Energy Systems Integrated

Facility (ESIF) project, described as Case No. FIA-12-0056, for the Department of Energy (the “Project”).

16. TCLG requested the following documents that the Department has created and/or obtained pertaining to the Project:

- a. All Encore Electric, Docket No. GO-12-062, certified payrolls for electrical work completed 11-17 July 2011 and 18-24 July 2011, including but not limited to:
 - a. Rate of pay;
 - b. Worker classification;
 - c. Fringe benefits;
 - d. Hours worked;
 - e. Names of contractors and sub-contractors;
 - f. Project identifiers
- b. All MTech Mechanical, Docket No. GO-12-063, certified payrolls for plumbing and pipefitting work completed 23-29 January 2012 and 16-22 January 2012, including but not limited to:
 - a. Rate of pay;
 - b. Worker classification;
 - c. Fringe benefits;
 - d. Hours worked;
 - e. Names of contractors and sub-contractors;
 - f. Project identifiers
- c. All Diamond Fire Protection, Docket No. GO-12-064, certified payrolls for sprinkler-fitter work completed 24-31 October 2011 and 01-07 November 2011, including but not limited to:
 - a. Rate of pay;
 - b. Worker classification;
 - c. Fringe benefits;

- d. Hours worked;
 - e. Names of contractors and sub-contractors;
 - f. Project identifiers
- d. All Weifield Group, Docket No. GO-12-066, certified payrolls for all electrical work completed, including but not limited to:
- a. Rate of pay;
 - b. Worker classification;
 - c. Fringe benefits;
 - d. Hours worked;
 - e. Names of contractors and sub-contractors;
 - f. Project identifiers

17. On August 9, 2012, August 14, 2012, and August 21, 2012, the Department acknowledged receipt of TCLG's request regarding the Weifield Group, MTech Mechanical, and Diamond Fire Protection, respectively. The Department noted that the responsive records requests was "granted in part, and denied in part" pursuant to Exemptions (b)(4) and (b)(6) of the Freedom of Information Act. Copies of the letters are attached as Exhibit A.

18. By letter to the Department's FOIA Office of Hearings and Appeals Director, TCLG submitted an appeal to the partially withheld FOIA request concerning the Project on September 17, 2013. A copy of the FOIA appeal is attached as Exhibit B.

19. In the appeal letter, TCLG asserted that the requested FOIA response was excessively redacted by the Department. The improperly and incorrectly withheld information resulted in unusable and unverifiable information.

20. On appeal, TCLG requested documents containing certified payrolls from the appropriate contracting agencies by following the FOIA procedures and guidelines from the Department, necessary to ensure adherence to the rules and regulations required under the Davis-Bacon and Related Acts (DBRA).

21. On October 19, 2012, the Department responded that the redacted information was correctly withheld under FOIA Exemption 4 because it is considered a trade secret and or

commercial or financial information obtained from a person that is considered privileged or confidential and is protected from disclosure. A copy of the letter is attached to this complaint as Exhibit C.

CAUSES OF ACTION

22. TCLG incorporates all allegations in the above paragraphs into this section by reference.

23. Defendant violated FOIA's requirement to respond to public records requests by improperly and incorrectly redacting the requested information under FOIA Exemption 4.

24. TCLG does not dispute that the information requested is primarily "commercial" and that the Defendant obtained the information from a "person," as defined by the courts.

25. The requested information is not a trade secret nor is it privileged or confidential.

26. Disclosure of the requested information (wage data and hours worked) would not substantially harm the prime contractor or subcontractor competitively because the requested information is readily observable in order to ensure strict compliance with DBRA.

27. Defendant's redacted response demonstrates that the Department is not exercising due diligence in responding to TCLG's request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Declare that Defendant's failure to provide Plaintiff with all of the information requested in its FOIA requests violated FOIA as set forth above;
- B. Order Defendant to immediately provide Plaintiff with unredacted copies of all of the documents requested in the FOIAs;
- C. Grant Plaintiff such other injunctive and declaratory relief as this Court deems just and proper;
- D. Retain jurisdiction over this case to ensure compliance with this Court's decree; and
- E. Award Plaintiff its reasonable attorney fees, costs and expenses incurred in pursuing this action.

Respectfully submitted,

Dated this 26th day of April, 2013.

/s/ James E. Barton II

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